MONTANA LEGISLATIVE HISTORY

Chapter 536 19~~9~~ 2001

Bill H 605 S _____ Original bill & history ✓ C

H. Committee on Federal Relations...			S. Committee on Nat. Res.		
Hearing Date(s)	2-17	✓ C	Hearing Date(s)	3/16	✓ C
		C		3/29	✓ C
		C			C
Free Conf.	4-12	C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 605

INTRODUCED BY D. MOOD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING LOCAL AND STATE AIR QUALITY REGULATION; PROHIBITING THE BOARD OF ENVIRONMENTAL REVIEW OR A LOCAL AIR POLLUTION CONTROL PROGRAM FROM APPROVING OR ADOPTING RULES OR REQUIREMENTS THAT ARE MORE STRINGENT THAN THOSE IMPOSED BY THE STATE OR THE FEDERAL GOVERNMENT UNLESS CERTAIN REQUIREMENTS ARE MET; PROVIDING FOR REVIEW OF RULES OR REGULATIONS ADOPTED IN THE LAST 5 YEARS THAT MAY BE MORE STRINGENT THAN FEDERAL OR STATE REQUIREMENTS; REQUIRING LOCAL AIR POLLUTION CONTROL PROGRAMS TO ESTABLISH PROCEDURES FOR PUBLIC NOTICE, PUBLIC COMMENT, PUBLIC HEARING, AND APPEAL PROCEDURES THAT ARE SIMILAR TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; CONFORMING EXISTING LAW PROHIBITING THE STATE FROM ADOPTING REGULATIONS MORE STRINGENT THAN FEDERAL LAW TO THE REVISED PROVISIONS AFFECTING LOCAL PROGRAMS; AND AMENDING SECTIONS 75-2-207 AND 75-2-301, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-2-207, MCA, is amended to read:

"**75-2-207. State regulations no more stringent than federal regulations or guidelines -- exceptions -- procedure**. (1) After April 14, 1995, except as provided in subsections (2) ~~through (5)~~ and (3) or unless required by state law, the board or department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board or department may incorporate by reference comparable federal regulations or guidelines.

(2) (a) The board or department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if: ~~the board or department makes a written finding after a public hearing and public comment and based on evidence in the record that:~~

~~(a) the proposed state standard or requirement protects public health or the environment of the state; and~~

~~(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.~~

~~(3) The written finding must reference information and peer-reviewed scientific studies contained~~

~~in the record that forms the basis for the board's or department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.~~

~~(4) (a) A person affected by a rule of the board or department adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board or department to review the rule. If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, the board or department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed $250.~~

~~(b) A person may also petition the board or department for a rule review under subsection (4)(a) if the board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board or department rule.~~

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the board or the department makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed standard or requirement:

(A) is needed to protect public health or the environment;

(B) can mitigate harm to the public health or the environment; and

(C) is reasonable and economically achievable with current technology.

(b) The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the department's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed standard or requirement.

(c) (i) A person or entity affected by a rule of the board or department adopted after January 1, 1990, and before April 14, 1995, that the person or entity believes is more stringent than comparable federal regulations or guidelines may petition the board or department to review the rule.

(ii) If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, the board or department shall either revise the rule to conform to the federal regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(iii) A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed $250.

(iv) A person may also petition the board or department for a rule review under subsection (2)(a) if the board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board or department rule.

~~(5)~~(3) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 2. Section 75-2-301, MCA, is amended to read:

"**75-2-301. Local air pollution control programs -- consistency with state and federal regulations -- procedure for public notice and comment required.** (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the board.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in subsection ~~(4)~~ (5), the board by order may approve a local air pollution control program that:

(i) subject to subsection (4), provides by ordinance or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees

collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(b) Board approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of ~~75-2-207~~ subsection (4).

(4) (a) The board may approve and a local air pollution control program may adopt an ordinance or local law to implement this chapter under circumstances in which there are no similar state or federal regulations or guidelines or may approve and adopt an ordinance or local law that is more stringent than comparable state or federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the board or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:

(A) is needed to protect public health or the environment of the area;

(B) can mitigate harm to the public health or the environment; and

(C) is reasonable and economically achievable with current technology.

(b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(c) (i) A person or entity affected by an ordinance or local law approved or adopted after January 1, 1996, and before [the effective date of this act] that the person or entity believes is more stringent than comparable state or federal regulations or guidelines may petition the board or the local air pollution control program to review the ordinance or local law.

(ii) If the board or local air pollution control program determines that the ordinance or local law is more stringent than state or federal regulations or guidelines, the board or local air pollution control program shall either revise the ordinance or local law to conform to the state or federal regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

~~(4)~~(5) Except for those emergency powers provided for in 75-2-402, the board may not delegate

to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

~~(5)~~(6) If the board finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

~~(6)~~(7) If the board has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

~~(7)~~(8) If, after the hearing, the board determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

~~(8)~~(9) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

~~(9)~~(10) If the board finds that the control of a particular air pollutant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of

their relationship to the size of the communities in which they are located.

~~(10)~~(11) A jurisdiction in which the department administers all or part of its air pollution control program under subsection ~~(8)~~(9) may, with the approval of the board, establish or resume an air pollution control program that meets the requirements of subsection (3).

~~(11)~~(12) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

(13) Local air pollution control programs established under this section shall provide procedures for public notice, public hearing, public comment, and appeal for any proposed new or revised ordinances or local laws adopted pursuant to this section. The procedures must be substantively equivalent to those provided in the Montana Administrative Procedure Act."

- END -

FISCAL NOTE

Bill #: HB0605 **Title:** Revise laws governing local and state air quality regulation

Primary Sponsor: Douglas Mood **Status:** As Introduced

Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY2002 Difference	FY2003 Difference
Expenditures:	0	0
Revenue:	0	0
Net Impact on General Fund Balance:	0	0

Yes	No		Yes	No	
?		Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Department of Environmental Quality

1. The additional public health and economic impact analyses will be accomplished using current staff. This bill will have no fiscal impact on the DEQ in the current or next biennium
2. The department does not anticipate a significant number of petitions to review rules adopted between January 1, 1990 and April 14, 1995, since there have been no petitions filed in the last six years.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. The bill increases the stringency of the findings required for adoption of local air quality requirements and authorizes either the Board of Environmental Review or the local air pollution control agency to make these findings. Regulated entities will be able to petition the BER or the local air pollution control agency to review local ordinances enacted after January 1, 1996 for compliance with these findings. The local air pollution control agency, when adopting local air quality requirements, will adopt and follow rulemaking requirements substantially equivalent to the Montana Administrative Procedures Act.

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/01/2001			
(H) Signed by Governor	05/01/2001			
(H) Transmitted to Governor	04/21/2001			
(S) Signed by President	04/20/2001			
(H) Signed by Speaker	04/20/2001			
(H) Returned from Enrolling	04/20/2001			
(C) Sent to Printing	04/19/2001			
(H) Sent to Enrolling	04/19/2001			
(H) Motion Carried	04/19/2001			
(H) 3rd Reading Free Conference Committee Report Adopted	04/19/2001	61	39	
(H) Scheduled for 3rd Reading	04/19/2001			
(S) 3rd Reading Free Conference Committee Report Adopted	04/18/2001	46	3	
(H) 2nd Reading Free Conference Committee Report Adopted	04/18/2001	90	9	
(S) Scheduled for 3rd Reading	04/18/2001			
(H) Scheduled for 2nd Reading	04/18/2001			
(S) 2nd Reading Free Conference committee Report Adopted on Voice Vote	04/17/2001	50	0	
(H) Free Conference Committee Report Received	04/17/2001			(H) Free Conference
(S) Scheduled for 2nd Reading	04/17/2001			
(S) Free Conference Committee Report Received	04/16/2001			(S) Free Conference
(H) Hearing Canceled	04/10/2001			(H) Free Conference
(S) Free Conference Committee Appointed	04/10/2001			
(H) Free Conference Committee Appointed	04/09/2001			
(H) 2nd Reading Senate Amendments Not Concurred	04/09/2001	83	17	
(H) Scheduled for 2nd Reading	04/09/2001			
(S) Returned to House with Amendments	03/31/2001			
(S) 3rd Reading Concurred	03/31/2001	28	22	
(S) 2nd Reading Concurred	03/30/2001	25	22	
(S) Scheduled for 2nd Reading	03/30/2001			

(C) Sent to Printing	03/29/2001			
(S) Committee Report--Bill Concurred as Amended	03/29/2001			(S) Natural Resources
(S) Committee Executive Action--Bill Concurred as Amended	03/29/2001	7	4	(S) Natural Resources
(S) Hearing	03/16/2001			(S) Natural Resources
(S) Referred to Committee	03/01/2001			(S) Natural Resources
(S) First Reading	03/01/2001			
(H) Transmitted to Senate	02/23/2001			
(H) 3rd Reading Passed	02/23/2001	52	48	
(H) Scheduled for 3rd Reading	02/23/2001			
(H) 2nd Reading Passed	02/22/2001	53	47	
(H) Scheduled for 2nd Reading	02/22/2001			
(H) Fiscal Note Printed	02/21/2001			
(H) Fiscal Note Received	02/21/2001			
(H) Committee Report--Bill Passed	02/19/2001			(H) Federal Relations, Energy, and Telecommunications
(H) Committee Executive Action--Bill Passed	02/19/2001	10	0	(H) Federal Relations, Energy, and Telecommunications
(H) Hearing	02/17/2001			(H) Federal Relations, Energy, and Telecommunications
(C) Introduced Bill Text Available Electronically	02/16/2001			
(H) Fiscal Note Requested	02/16/2001			
(H) Referred to Committee	02/16/2001			(H) Federal Relations, Energy, and Telecommunications
(H) First Reading	02/16/2001			
(H) Introduced	02/16/2001			
(C) Draft Delivered to Requester	02/16/2001			
(C) Draft Ready for Delivery	02/16/2001			
(C) Draft in Assembly/Executive Director Review	02/13/2001			
(C) Draft in Final Drafter Review	02/13/2001			
(C) Bill Draft Text Available Electronically	02/12/2001			
(C) Draft in Input/Proofing	02/12/2001			
(C) Draft to Drafter - Edit Review [CMD]	02/10/2001			
(C) Draft in Edit	02/10/2001			
(C) Draft in Legal Review	02/09/2001			

(C) Draft to Requester for Review	02/05/2001			
(C) Draft to Requester for Review	02/02/2001			
(C) Draft Request Received	01/13/2001			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN AUBYN A. CURTISS**, on February 17, 2001 at 12:00 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: Rep. Dee Brown (R)
Rep. Roy Brown (R)

Members Absent: None.

Staff Present: Stacey Leitgeb, Committee Secretary
Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	HB 605, 2/14/2001; HB 606, 2/14/2001; HB 579, 2/14/2001
Executive Action:	HB 107; HB 467; HJ 19; HJ 20; HJ 22; HJ 26; HB 579; HB 606; HB 605; HB 407; HB 467

EXECUTIVE ACTION ON HB 107

Motion/Vote: **REP. STORY moved TO BRING HB 107 OFF THE TABLE. Motion carried unanimously.**

REP. TOM DELL asked if there were other states that had put this in statute. **REP. RICE** said the handout showed the other states. No other states had put this into statute though.

REP. DELL was curious about the mechanism. He asked if this would be considered a hostile act by the federal government. **REP. RICE** said they would draw up a bill and give notice to the government through delegation.

REP. BOB STORY asked if one of the first attempts at nullification was the Whiskey Rebellion. **REP. DAVIES** answered yes.

REP. STORY asked for examples of types of laws the legislature might deem unconstitutional and declare null and void in the state of Montana. **REP. DAVIES** said there were many laws. The Disability Act was referred to be one example.

REP. STORY said this bill would be as broad as the legislature wanted to use it. He asked about the concerns for the borders, whether with Canada or with other states. **REP. DAVIES** thought the constitution spoke pretty clearly about the states. One of the prohibitions in the constitution was that one state can't be divided into two, unless the state legislatures are in approval.

REP. CAROL JUNEAU referred to a handout mentioning treaties with federally recognized Indian tribes and she asked if this would be an amendment. **REP. RICE** said it was already an amendment.

REP. JUNEAU agreed with the opponents testimony. She said perhaps it may be something they would want to leave in the bill. **REP. RICE** said her intent was to address the new treaties coming from the UN.

Closing by Sponsor:

REP. RICE gave a background of history and stated last year, the federal government was chastised for being far over the line to the point where they are going to need a sub court under the Supreme Court to deal with all of the abuses that congress is imposing on the states. The intent was not to have to go through a costly challenge clear to the Supreme Court. This was a checks and balances process to check the federal government from usurping the states rights. A law that isn't constitutional is not a law.

HEARING ON HB 605

Sponsor: **REP. DOUG MOOD, HD 58, Seeley Lake**

Proponents: **None**

Opponents: **Linda Stahl, Montana Local Health Officers Group**

Opening Statement by Sponsor:

REP. DOUG MOOD, HD 58, Seeley Lake, said this bill was brought forth because of a group of individuals who were within the area that was governed by the city of Missoula. There were local air pollution standards that the city was attempting to put in place by rule and those rules were written without adequate input or public information. They were asking for a mechanism providing for public notice and input when a local entity is attempting to put in air pollution control programs that are more stringent than what they can expect from the state. Under the local and state air quality regulations, there currently is a mechanism which does exactly that. There was a change in this adding a time limit of six months for the board to have its public meetings.

Proponents: **None**

Opponents' Testimony:

Linda Stahl, Montana Local Health Officers Group, submitted a written testimony **EXHIBIT(feh40a03).** She handed out information pertaining to the bill **EXHIBIT(feh40a04).**

Questions from Committee Members and Responses:

REP. BOB STORY asked if this bill was to fix a local problem. **REP. MOOD** thought the individuals who were involved in the Missoula situation felt quite slighted the rules were being imposed without any input from them at all. He would hope this would fix that problem.

REP. STORY asked if this bill put local governments under something similar to the Administrative Procedures Act. **REP. MOOD** said the language was similar.

REP. STORY asked what would be wrong with requiring local governments to comply with the Administrative Procedures Act. **Ms. Stahl** said it was a larger policy question. Some of the language in the act was already very similar in terms of how

counties have to conduct their business. There was also the Accountability Act that they were conforming to. This could be confusing.

REP. STORY asked what specifically was confusing. **Ms. Stahl** said that they would have to look at two different sections of the law.

Closing by Sponsor:

REP. MOOD hoped the bill would pass the committee at this point. There were people who were affected very dramatically by these rules and regulations. It was only reasonable to have them have input into how these regulations are established from the beginning. There were people making these regulations who have absolutely no vested interest in their implementation.

HEARING ON HB 579

Sponsor: **REP. CAROL JUNEAU, HD 85, Browning**

Proponents: **Lynn Long, Unemployment Insurance Division**

Opponents: **None**

Opening Statement by Sponsor:

REP. CAROL JUNEAU, HD 85, Browning, brought this bill forward on behalf of the Department of Labor. The purpose of the bill was to modify the current unemployment insurance laws to reflect Montana's laws conformed to recent changes in federal law related to unemployment taxes. The new law required the states to provide unemployment insurance coverage for employment by federally recognized Indian tribes and wholly-owned subsidiaries of those tribes. The tribes would have a choice to pay unemployment taxes to fund their share of the unemployment insurance system or to provide reimbursement to the state for benefits already paid out in claims that are related to the employment of that tribe. She explained the tribes would have available to them the same funding option that currently exists for other governmental agencies, entities and non-profits. The bill made some technical changes in reference to employment by Indian tribes and wholly-owned subsidiaries of the tribes. The bill provided in the event the tribe was delinquent in paying those costs for over 90 days, the tribe and all its subsidiaries would be removed from the state unemployment insurance. This was going to allow the tribal governments the opportunity to provide

REP. DELL agreed with the philosophy there was need to protect the rights. However, he thought the Supreme Court had been becoming much more activist in terms of protecting state rights.

Vote: Motion failed 1-9 with Rep. Curtiss voting aye.

Vote: By committee consensus the vote was reversed to table HB 606.

EXECUTIVE ACTION ON HB 605

Motion: REP. MOOD moved HB 605 DO PASS.

Discussion:

REP. CURTISS commented the board of Missoula county had not been abiding by the administrative procedures rules.

REP. MOOD said that appeared to be the case. When they had the public hearing, the rules were completely written and none of the industrial people who were affected by the rules had any opportunity prior to that hearing to offer input.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 407

Motion: REP. STORY moved HB 407 DO PASS.

Discussion:

REP. STORY said during the hearing he had asked MPC if Northwest intended to do the same type of service in Montana. If they were, then it would be apparent that if you can provide this service without increasing staff, then they were over-staffed to begin with. Northwest responded they had a separate company that did that type of work.

REP. OLSON was irritated by parts of this bill. He received over 200 pieces of correspondence on the issue. He understands the contractors' concern, but he didn't believe utilities should be doing this kind of work subsidized under the utility side of their business.

REP. SCHMIDT said this would be an unfair advantage as had been seen in other markets. She was sympathetic to those retailers who are trying to compete with the utility.

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 16, 2001 at 3:30 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Melissa Rasmussen, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 605, 3/12/01
HB 513, 3/12/01
HB 599, 3/12/01
HB 457, 3/12/01
Executive Action: HB 459
HB 473

HEARING ON HB 605

Sponsor: **REP. DOUG MOOD, HD 58, Seeley Lake**

Proponents:
Rex Svoboda, Missoula Chamber
Neal Marxer, Smurfit-Stone Container Corp.
Don Williams, Self
Ellen Porter, Louisiana Pacific
Steve Brown, John R. Daily, Inc.
Webb Brown, MT Chamber
Don Allen, WETA
Dexter Busby, MT Petroleum Association
Cary Hegreberg, MT Wood products Association
Charles Brooks, Billing's Chamber
Jim Kuffel, Bolt & Anchor Supply, Inc.

Opponents:
Linda Stoll, MT Local Health Officers
Jean Curtiss, Missoula County Commissioner
Jim Carlson, Missoula City County Health Dept.
Martha McClain, Deputy County Attorney
Ellen Leahy, Missoula City County Health Dept.
Joan Miles, Lewis & Clark Health Department
Joseph Russell, Flathead City Council Health

Opening Statement by Sponsor:

REP. DOUG MOOD, HD 58, Seeley Lake, prefaced his remarks by handing out a clarification letter to HB 459 **EXHIBIT(nas60a01).** He opened by stating the bill is a result of a Missoula County situation. He asserted the purpose of HB 605 is to clarify. If stricter air quality standards are going to be established, that are more stringent than state standards, there must be adequate public comment. He pointed out that the language on page four outlines the process a local health board has to go through if they create standards that are more stringent than the states. He declared the language on pages two and three strike old language to match the new language on pages four and five. He stated that the main difference is changing the time frame from twelve months to six months for a board to make a determination.

Proponents' Testimony:

Rex Svoboda, Missoula Chamber, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas60a02).**

Neal Marxer, Smurfit-Stone Container Corporation, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas60a03).**

Don Williams, Representing himself, informed the committee he has served on numerous task forces that have dealt with these types of issues. He stated the bill provides for a fair and open process. He charged that businesses have a right to a fair process based on science and facts. He urged the committee to clarify a process that is easily skewed by business and industry.

Ellen Porter, Louisiana Pacific, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas60a04).**

Steve Brown, John R. Daily, Inc., told the committee that the bill provides clarity about procedural rules that local health departments must follow when they adopt or revise their air quality rules. He charged that the bill does not change the substance of any air quality program. The bill is simple and straight forward. He proclaimed that the bill provides the possibility to petition laws that are in place. It provides procedural protection, and does not repeal current rules. He declared that the bill provides a better defined process along with an accountability standard.

Webb Brown, MT Chamber, stated that the bill increases the opportunity for businesses to be involved in issues that affect their livelihood. He added that the Chamber does not typically get involved in local issues unless they are asked to by their members.

Don Allen, WETA, charged that the bill is important for public participation. He stated at the state level this is the way business is done, it should be the same at the local level. He declared that public process provides as much predictability and certainty as possible.

Dexter Busby, MT Petroleum Association, added his support for the bill.

Cary Hegreberg, MT Wood Products Association, echoed the comments made by **Mr. Allen.** He added that public involvement is a good thing. He charged that people have the right to know about issues that concern them.

Charles Brooks, Billing's Chamber, spoke in favor of the bill.

Jim Kuffel, Bolt & Anchor Supply, Inc., stated that he has watched the demise of industry throughout the state. He proclaimed that the bill would level the playing field and give industry a voice.

Opponents' Testimony:

Linda Stoll, MT Local Health Officers, handed out letters from individuals who oppose the bill **EXHIBIT(nas60a05).** She commented that the bill is a Missoula issue. She stated that it would be bad policy to change state law to accommodate one cities issues.

Jean Curtiss, Missoula County Commissioner, spoke in opposition to the bill and submitted written testimony along with letters, articles and a resolution **EXHIBIT(nas60a06).**

{Tape : 1; Side : B}

Jim Carlson, Missoula City County Health Dept., walked the committee through visual examples of the process required by law in order to pass air quality standards. The main areas he addressed were; adopt local air pollution regulations and review local advisory council and State Board of Environmental Review. He stated that after the public process has been completed a large document that lists all of the findings is published. He charged that he does not know of a more stringent process. He declared that the stringent rules have cut down violations to zero in a few air quality standards. He stated there are a few MAPA requirements that they are not required to do, justification document, interested parties list and written response requirements. He argued the problem with MAPA requirements is submitting references to the Secretary of State. Adopting the language would throw the local and state programs out of sync. He argued that the bill does increase the requirements for passing laws more stringent than federal laws at both the state and local level. He stated that the language in the bill is not the same as the current law for regulations passed by the Board of Environmental Review. He warned if the regulations are going into the Federal Required Air Pollution Plan in addition to all of the things addressed; they have to be approved by the Governor and the EPA. He promised the committee that Missoula has already adopted a plan to create a more stringent review process. He stated that the MAPA portion of the bill is not appropriate. He charged that local governments should have the same standards that HB 521, passed several sessions ago, applied to all units of state government.

Martha McClain, Deputy County Attorney, spoke in opposition to the bill and submitted written testimony **EXHIBIT(nas60a07).**

Ellen Leahy, Missoula City County Health Dept., charged that the bill is a Missoula issue. She stated that the bill would effect re-designation. It would upset what local governments have worked for. She stated that once they apply they would have to

prove for two decades into the future that they can comply with air quality standards. She argued that allowing the agency to look five years back will affect their ability to comply for the next twenty years. She stated that the bill changes the state language. She argued that they do comply with the existing stringency language. She asserted what has been proposed changes the rules and creates ambiguity. She charged that fixing the dispute into law would lead to litigation.

Joan Miles, Lewis & Clark Health Department, stated that she was opposing the bill as written. She expressed that air districts in the state are not trying to become attainment areas, they already are. She declared that the law as written makes it virtually impossible to do anything without a comparable federal guideline. She was concerned specifically with the language on page four. She gave the example of calling a hotline to see if it's okay to burn. That particular guideline does not have a federal standard to compare it to. She stated that to ensure the same justification standards apply to air quality as septic systems the language needs to be added. She charged that the bill in its current state does not accomplish that specific goal. She stated that substantive to MAPA is not well defined. She warned that new language would confuse the issue.

Joseph Russell, Flathead City Council Health, warned the committee against imposing regulations on other districts and communities when the bill is clearly a Missoula problem.

Informational Testimony:

Jim Madden, DEQ, informed the committee that he would be available to answer questions.

{Tape : 2; Side : A}

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA inquired why local governments are excluded from certain MAPA restrictions. **Mr. Madden** told her that many regulations are not applicable to local agencies. Most of the regulations are applicable only to the state. **SEN. COCCHIARELLA** questioned what would happen if the language was adopted on page four. She questioned how a state would handle a petition that came up during the retroactive status. **Mr. Madden** stated that the particular provisions would require the state or local board to repeal the ordinance or require the governing body to make the stringency findings. He stated the provision is a look back provision. It allows people to come in after the effective date of the act and look at ordinances that were passed

earlier and require them to be justified under the act. **SEN. COCCHIARELLA** asked if these situations would cause a fiscal impact. **Mr. Madden** declared that there would have to be a public hearing. **SEN. COCCHIARELLA** wondered if under the bill, to adopt MAPA the state would have primacy over local issues. **Mr. Madden** stated primacy is not an accurate word. But adopting MAPA would take away some local control. He informed her under the current Public Participation and Government Act local agencies still have a baseline for public participation.

SEN. COCCHIARELLA expressed her concern about the language on line 11 page four. She asked how that would affect burning laws in Missoula. **Ms McClain** informed her that they have tried to create different standards to make their provisions work, such as hotlines. **SEN. COCCHIARELLA** questioned if the language included the rule of no fireplaces. **Ms McClain** said that it would include that. She confessed she did not know if there was a comparative federal guideline.

SEN. COCCHIARELLA asked what happened to create the need for this legislation. **Mr. Marxer** told her it was created because of the way certain businesses were treated when the guidelines were modified. He stated that once the public got involved the process changed. He argued that the process needs to be defined to avoid future conflict. **SEN. COCCHIARELLA** asked if he participated in the recent proposals. He informed her that there is no defined procedure. **SEN. COCCHIARELLA** asked him to clarify if he was talking about Missoula county or the state. **Mr. Marxer** said for the state. He expressed that local boards need a procedure so they are allowed to participate in the public process. **SEN. COCCHIARELLA** asked if he was aware of how MAPA works and it's requirements. **Mr. Marxer** stated he was not familiar with MAPA.

SEN. BILL TASH clarified that a board member is appointed for three years. He asked how many members serve on the advisory council. **Ms CURTISS** told him the council has nine members. He asked if they could be reappointed. She said yes.

SEN. COCCHIARELLA asked how **Ms Porter** participated on the council. **Ms Porter** stated that she serves on the Air Quality Council. **SEN. COCCHIARELLA** asked if there was an industry representative on the council. **Ms Porter** informed her that there is no one from industry on the council.

SEN. GLENN ROUSH asked **REP. MOOD** to address the concerns about local control in his closing.

Closing by Sponsor:

REP. MOOD claimed that the bill raises a policy issue that needs to be decided by the legislature. He questioned if there should be predictability with these types of issues, that is what the body must decide. He gave examples of Missoula air quality standards, such as not allowing a diesel truck to idle longer than twenty minutes. He also pointed out contradictions within those standards. He challenged that the contradictions arise when there is a lack of public participation. He stated that the bill clarifies when a local standard is more stringent than what's on the state books the public must be allowed to participate in the process. He observed, it is strange the people who do the regulating do not want the public to participate.

HEARING ON HB 513

Sponsor: **REP. DAN FUCHS, HD 15, Billings**

Proponents:
Peggy Trenk, MT Association of Relators
Andy Skinner, HPOA
Clayton Fiscus, Self
Byron Roberts, MT Building Association
Al Littler, Billings Association of Relators
Stuart Doggett, MT Manufactured Housing & RV Association

Opponents:
Vivian Drake, Self
Terry Murphy, Lake County
Jim Carlson, Missoula City County Health Dept.
Joan Miles, Lewis and Clark Health Dept.
Spencer Shropshire, Lewis & Clark Water Quality Board
Linda Stoll, MT Local Health Officers
Tim Davis, MT Smart Growth Coalition

Opening Statement by Sponsor:

REP. DAN FUCHS, HD 15, Billings, stated the bill recognizes that as a source of nitrate degradation individual septic systems are non-significant. He declared that the bill does not eliminate requirements under the current rules that a developer test all existing wells for nitrate specific conductivity and total coliform bacteria. The bill does not change water quality; it recognizes that single family septic systems on one plus acres are non-significant to nitrate degradation in the state.

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 29, 2001 at 8:00 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Melissa Rasmussen, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: HB 573; HB 572; HB 495; HB 605; HB 457

CHAIRMAN CRISMORE segregated amendments number 5 and 7.

SEN. COLE questioned if taking out section 2 of 13 would be okay.

Ms Vandenbosch stated if the Office of Surface Mining disapproves of the changes the law would become invalid.

Vote: Motion that **AMENDMENTS HB049502.AMV MINUS 5 AND 7 BE ADOPTED carried 10-0.**

Motion/Vote: **SEN. COLE** moved that **HB 495 BE CONCURRED IN AS AMENDED. Motion carried 8-3 with Cocchiarella, McCarthy, Toole voting no.**

EXECUTIVE ACTION ON HB 605

SEN. COCCHIARELLA handed out a copy of non-edited amendments **EXHIBIT(nas71a07).** She informed the committee that she eliminated the language that makes reference to economically and reasonable. She argued that the language conflicts with the review process.

Motion: **SEN. MCCARTHY** moved that **HB 605 BE CONCURRED IN.**

Motion: **SEN. COCCHIARELLA** moved that **AMENDMENTS (EXHIBIT 7) BE ADOPTED.**

Discussion:

SEN. GROSFIELD questioned how the language on page 2, line 25 should read. **SEN. COCCHIARELLA** stated it should read, "is reasonably achievable with current technology". **SEN. GROSFIELD** asked her to clarify her motion. **SEN. COCCHIARELLA** informed him she was going to adopt the language that industry requested.

Substitute Motion: **SEN. MILLER** moved that **HB 605 BE TABLED.**

SEN. MILLER withdrew his motion for purposes of comment.

SEN. MCCARTHY commended **SEN. COCCHIARELLA** for the work she put into resolving this issue. She argued that changing the effective date may solve some of the problems

SEN. MILLER argued that the bill is not going to go anywhere.

SEN. GROSFIELD declared it is important to keep pressure on the people to solve the issue.

Substitute Motion/Vote: **SEN. MILLER** made a substitute motion that **HB 605 BE TABLED. Substitute motion failed 4-6 with Miller, Roush, Tash, Toole voting aye.**

SEN. COCCHIARELLA changed amendments number seven and fourteen back to their original form, remove the words reasonably and economically. She argued that number 21 was adopting a close form of MAPA. Add the language, "at least 25 or whichever's less".

Ms Vandenbosch warned that number four would make the title inaccurate. **SEN. COCCHIARELLA** withdrew number four. **Ms Vandenbosch** suggested removing the third strike in amendment number four. **SEN. COCCHIARELLA** agreed with removing that strike.

Motion/Vote: **SEN. COCCHIARELLA** moved that **AMENDMENTS BE ADOPTED. Motion carried 11-0.**

Motion/Vote: **SEN. MCCARTHY** moved that **AMEND THE EFFECTIVE DATE TO READ MAY 1, 2003 BE ADOPTED. Motion failed 9-2 with Miller, Roush voting aye.**

Motion/Vote: **SEN. GROSFIELD** moved that **HB 605 BE CONCURRED IN AS AMENDED. Motion carried 7-4 with Miller, Roush, Tash, Toole voting no.**

EXECUTIVE ACTION ON HB 457

Motion/Vote: **SEN. MILLER** moved that **HB 457 BE CONCURRED IN. Motion failed 5-6 with Crismore, Mahlum, Miller, Roush, Taylor voting aye.**

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
FREE CONFERENCE COMMITTEE ON HOUSE BILL 605

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on April 12, 2001 at 2:15 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:
Sen. William Crismore, Chairman (R)
Rep. Douglas Mood, Chairman (R)
Rep. Gilda Clancy (R)
Rep. Gary Matthews (D)
Sen. Linda Nelson (D)

Members Excused: Sen. Bill Tash (R)

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted:
Executive Action: HB 605

EXECUTIVE ACTION ON HB 605

{Tape : 1; Side : A; Approx. Time Counter : 0.5}

Mr. Mitchell handed out the amendments **EXHIBIT(frh83hb0605a01)** and explained them.

REP. MOOD asked **Mr. Mitchell** if the new language in section 1 is a reconfiguration under modern code writing standards. **Mr. Mitchell** stated that the crossed out language and underlined language in section 1, with the exception of a couple words, is virtually the same. The one substantive difference is that a

local government would have 6 months instead of 12 months to respond to a petition. Also, it now says a person or entity affected by the rule may petition instead of just a person.

REP. MOOD asked **Mr. Mitchell** if he is concerned about the language in section 18 and why. **Mr. Mitchell** said, the question is the trigger. What does it mean by proposal of new rules that are initiated. **REP. MOOD** redirected the question to **Don Allen, WETA. Mr. Allen** stated, **Joan Miles, Lewis and Clark County** has come up with some language to address these concerns. **Ms. Miles** explained her concerns and read her proposed language. **REP. MOOD** said her language made sense.

Motion: **REP. MOOD** moved that **HB 605 BE AMENDED.**

Discussion:

REP. MATTHEWS asked, then the old rules are in effect and to be preserved and if they want to add new rules they can't get any stricter than the state rules?

REP. MOOD stated, the bill says that rules can be instituted that are equal to or less than the state rules. If they want to enforce rules stricter than the state rules then they have to go through the public notification process.

Mr. Mitchell stated, depending on how this works out it would be possible to also have the discretion to do something about the effective date. He stated that he would work with the editors to fix any contradictions in the bill.

Vote: Motion that **HB 605 BE AMENDED. Motion carried unanimously.**

Motion/Vote: **REP. MOOD** moved that **HB 605 DO PASS AS AMENDED. Motion carried unanimously.**

ADJOURNMENT

Adjournment: 2:30 P.M.

SEN. WILLIAM CRISMORE, Chairman

Holly Jordan, Secretary

DM/WC/HJ

EXHIBIT(frh83hb0605aad)